IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3736 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRIME INDUSTRIES VALVE MANUFACTURING CO

Versus

SARFARAAZ AHMED

Appearance:

1. Special Civil Application No. 3736 of 1997

MR HJ NANAVATI for Petitioner No. 1

MR NR SHAHANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner-employer has challenged the award of the Labour Court, Ahmedabad in Reference (LCA) No.1855 of 1989, whereby the respondent workman is ordered to be reinstated with continuity of service, full back wages and exemplary cost of Rs.2,000/-. At the time of admission of this petition on 19.06.1997, the order with regard to payment of back wages was stayed and thereafter, affidavit-in-reply, additional affidavit-in-reply and reply to the additional

affidavit appears to have been filed.

2. It appears from the perusal of the impugned award that, the case of the petitioner before the Labour Court was that, the respondent had resigned from his service by tendering a resignation in writing but signature on that resignation was denied and disputed by the respondent workman. In such circumstances, the Labour Court indulged in the exercise of comparing the signatures of the respondent, on the purported resignation of the workman and came to the conclusion that, the employer had tried to make out a false case of resignation by the workman. Having reached to such conclusion, the impugned order of reinstatement with full back wages and cost was made without any worthwhile discussion on the aspect of back wages.

3. It was vehemently argued by the learned advocate Mr.Harshal J.Shah, appearing for Mr.H.J.Nanavati that, the Labour Court could not have entered into the exercise of comparing the handwritings of the workman as an expert and appropriate course would have been to obtain the opinion of the expert rather than the Court itself comparing the signatures of the respondent on the letter of resignation. That argument is, however, self-defeating. In view of the dispute about the genuineness of the signature on the letter, supposed to be resignation of the respondent, and clear evidence of the workman denying his signature on the letter of resignation, it was incumbent upon the petitioner to prove the signature and the petitioner having failed to discharge that onus of proof, the Labour Court was justified in discarding the evidence of resignation and in accepting the case of the workman of illegal termination of service. However, as far as the consenquential relief of reinstatement and back wages were concerned, as against a bare denial of any alternative employment, the proprietor of the petitioner-concern had examined himself and stated on oath that, he had personally seen the respondent working in his own factory and he had also offered to reinstate the workman on condition of his withdrawing the resignation. It was also stated by him in the course of his cross-examination that, the workers doing similar job-work, were earning Rs.200/- to Rs.250/-, per day. The impugned award appears to have completely overlooked and failed to consider this positive evidence in deciding the issue of back wages. Therefore, the grant of full back wages appears to be without application of mind and without adverting to the relevant evidence on record.

4. In the aforesaid facts and circumstances, the

petition is required to be partly allowed and the order as regards payment of back wages is required to be quashed. Accordingly, part of the award and order awarding full back wages and cost to the respondent is quashed and rest of the award ordering reinstatement with continuity of service remains intact. Rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J.)

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